

Rejections under 35 USC §102

The Examiner has rejected claims 1-29 under 35 USC §102(e) as being anticipated by the Campbell et al. '026 patent. Applicant respectfully traverses the rejection.

The present application was filed on February 8, 1999, as a continuation-in-part application of applicant's co-pending application Serial No. 08/774,022, filed on December 27, 1996, which issued as U.S. Patent No. 5,871,449 ("the Brown '449 patent"). Applicant believes that the Brown '449 patent as filed included disclosure supporting at least claims 1-4, 7-11, 14-18, 21-25, 28 and 29. In particular, the disclosure of "the positioner including a flow passageway capable of allowing fluid to flow past the positioner" can be found in the Brown '449 patent at column 5, lines 32-38. Thus, at least claims 1-4, 7-11, 14-18, 21-25, 28 and 29 of the present application are entitled to the December 27, 1996 filing date of the Brown '449 patent.

The Campbell et al. '026 patent claims priority from provisional application 60/107,693, filed in November 9, 1998 ("the Campbell '693 provisional application"). The Campbell et al. '026 patent is also a continuation-in-part application of Serial No. 08/895,757, filed on July 17, 1997, which issued as U.S. Patent No. 5,924,997 ("the Campbell '997 patent") and which claimed priority from provisional application 60/023,289, filed on July 29, 1996 ("the Campbell '289 provisional application"). The disclosure of the Campbell et al '026 patent which the Examiner appears to be relying on with respect to the "flow passageway" feature was not disclosed in the Campbell '997 patent or the Campbell '289 provisional application. Thus, with respect to the "flow passageway" feature the Campbell et al. '026 patent is not entitled to a 102(e) date arising from either the Campbell '997 patent or the Campbell '289 provisional application.

Assuming arguendo that the Campbell et al. '026 patent is entitled to the filing date of the Campbell '693 provisional application, then the earliest 102(e) date for the Campbell et al. '026 patent with respect to the "flow passageway" feature would be November 9, 1998. Since the present application is entitled to an earlier filing date, i.e. December 27, 1996, applicant asserts that the Campbell et al. '026 patent is not a 102(e) reference against pending claims 1-4, 7-11, 14-18, 21-25, 28 and 29. Claims 5-

6, 12-13, 19-20 and 26-27 are also patentably distinct from the cited references for the following reasons.

Claims 5, 12, 19, and 26 recite a positioning guidewire to position at least one of the receivers. This feature is neither taught nor suggested by the Campbell et al. '026 patent. Thus, claims 5, 12, 19 and 26 are patentable over the Campbell et al. '026 patent regardless of its 102(e) date.

Claims 6, 13, 20 and 27 recite that the receiver has a luminescent material. This feature is neither taught nor suggested by the Campbell et al. '026 patent. Thus, claims 6, 13, 20 and 27 are patentable over the Campbell et al. '026 patent regardless of its 102(e) date.

For the foregoing reasons, claims 1-29 are believed to be patentable.

Rejections under 35 USC §103

The Examiner has rejected claims 1, 3-5, 7-9, 11, 12, 14-16, 18, 20-23, 25, 26, 28 and 29 under 35 USC §103(a) as being unpatentable over Casscells et al. '075 in view of Campbell et al. '026. Applicant respectfully traverses this rejection.

The Examiner has stated that Casscells et al. '075 does not teach a passageway allowing blood to flow past the balloon. The Examiner has thus relied on Campbell et al. '026 for the teaching of a passageway to allow blood to flow past the occlusion balloon. As stated above, the Campbell '026 patent is at best a 102(e) reference for this feature as of November 9, 1998. Since, as discussed above, applicant believes that the present application is entitled to an earlier filing date for claims 1, 3-4, 7-9, 11, 14-16, 18, 21-23, 25, 28 and 29, the Campbell '026 patent is not a 102(e) reference against these claims. Thus, Casscells et al. '075 cannot be combined with Campbell et al. '026 to yield the present invention of claims 1, 3-4, 7-9, 11, 14-16, 18, 21-23, 25, 28 and 29.

Claims 5, 12 and 26 recite a positioning guidewire to position at least one of the receivers. This feature is neither taught nor suggested by either Casscells '075 or Campbell '026, either alone or in combination. Thus, claims 5, 12 and 26 are patentably distinct from Casscells '075 or Campbell '026, either alone or in combination.

The Examiner has rejected claims 6, 13, 20 and 27 under 35 USC §103(a) as being unpatentable over Casscells et al. '075 in view of Campbell et al. '026 as set forth

above and further in view of Narciso, Jr. '456. Applicant respectfully traverses this rejection.

Claims 6, 13, 20, and 27 recite a receiver having a luminescent material. Neither Casscells et al. '075 nor Campbell et al. '026 teach or suggest a receiver having a luminescent material. Narciso, Jr. '456 teaches a device and method for intra-vascular optical radial imaging utilizing a synchronous fluorescence detector. The target tissue is irradiated at a wavelength that will induce fluorescence in molecules in the tissue. Properties of the fluorescence signal are used to differentiate healthy tissue from atherosclerotic plaque.

The present invention, however, claims a receiver that has a luminescent material. The luminescent material is placed near a vessel wall and is thereby excited by the heat of the tissue. The excited luminescent material emits radiation that is proportional to the temperature of the tissue. This emitted radiation is used to determine the presence of vulnerable plaque based upon the detected temperature. In Narciso, Jr. '456 the device is a fluorescence detector, which is distinct from a receiver having a luminescent material. Narciso, Jr. '456 has to irradiate the tissue at a specific wavelength in order to induce fluorescence. The present invention merely receives the thermal signal that is already present in the tissue and then uses the luminescent material to convey the received information in another format. For the foregoing reasons, the present invention of claims 6, 13, 20, and 27 is patentably distinct from Narciso, Jr. '456, either alone or in combination with Casscells et al. et al. '075 or Campbell et al. '026.

In view of the above remarks, it is submitted that all of the pending claims are in condition for allowance and allowance of claims 1–29 is earnestly solicited.

CONCLUSION

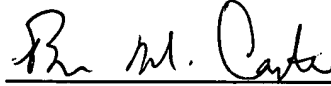
For the foregoing reasons, all claims presently on file in the subject application are in condition for immediate allowance, and such action is respectfully requested.

If it is felt for any reason that direct communication with applicants' attorney would serve to advance prosecution of this case to finality, the Examiner is invited to call the undersigned attorney at the below listed telephone number.

The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 16-2230.

Respectfully submitted,

Dated: December 10, 2001

A handwritten signature in dark ink, appearing to read "Bruce M. Canter", is written over a horizontal line.

Bruce M. Canter
Registration No. 34,792
Attorney for Applicants

OPPENHEIMER WOLFF & DONNELLY LLP
840 Newport Center Drive, Suite 700
Newport Beach, CA 92660
Telephone: 949.823.6000
Facsimile: 949.823.6100